

APPEAL NO. 030823  
FILED MAY 22, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 20, 2003. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the fourth quarter. The appellant (self-insured) appealed, and the claimant responded.

DECISION

Affirmed.

The claimant sustained a compensable back injury. Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in issue is whether the claimant made a good faith effort to obtain employment commensurate with her ability to work during the qualifying period for the fourth quarter. The claimant contended that she had no ability to work during the qualifying period. It is undisputed that the claimant did not work or look for work during the qualifying period. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work.

The hearing officer found that the claimant had no ability to work during the qualifying period for the fourth quarter as set out by the claimant's treating doctor in his report of November 13, 2002, and that no report showed that the claimant had an ability to work during the qualifying period for the fourth quarter. The hearing officer concluded that the claimant is entitled to SIBs for the fourth quarter.

In Texas Workers' Compensation Commission Appeal No. 960880, decided June 18, 1996, the Appeals Panel stated that "medical evidence from the filing periods is clearly relevant but other medical evidence from outside the periods, especially that which is relatively close to the filing periods, may be relevant to the condition of the claimant during those periods." In Texas Workers' Compensation Commission Appeal No. 001055, decided June 28, 2000, the Appeals Panel noted that medical evidence from outside the qualifying period may be considered insofar as the hearing officer finds it probative of conditions in the qualifying period. In Texas Workers' Compensation Commission Appeal No. 002219, decided November 2, 2000, the Appeals Panel noted that in determining whether another record shows that the injured employee is able to return to work, factors such as a worsening of medical condition and when the other record was prepared in relation to the qualifying period could be considered. In the instant case, there is evidence from the claimant's testimony, as well as the reports of

the treating doctor, that the claimant's medical condition from her compensable back injury worsened during the qualifying period for the fourth quarter. The hearing officer could consider that the functional capacity examination, which was performed about a month before the qualifying period began, did not take into consideration the worsened condition during the qualifying period, nor did the examination of the doctor who performed a required medical examination, which was also performed prior to the qualifying period. The claimant underwent her fifth back surgery shortly after the qualifying period for the fourth quarter ended.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision that the claimant is entitled to SIBs for the fourth quarter is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR  
STATE OFFICE OF RISK MANAGEMENT  
300 W. 15TH STREET  
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR  
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR  
STATE OFFICE OF RISK MANAGEMENT  
P.O. BOX 13777  
AUSTIN, TEXAS 78711-3777.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge